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April 21, 2009

## **AGENDA ITEM 3a**

### **TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE**

**I. SUBJECT:** Assembly Bill 86 (Nava) – As Introduced January 5, 2009

Airport Police Officers

*Sponsor: Peace Officers Research Association of California and Service Employees International Union*

**II. PROGRAM:** Legislation

**III. RECOMMENDATION:** Neutral

This bill would give contracting agencies the option to reclassify specified airport law enforcement officers from local miscellaneous to local safety.

### **IV. ANALYSIS:**

Currently, those employees who perform duties as airport police/patrol officers are typically classified as local miscellaneous members in the CalPERS system if their principal duties do not clearly fall within the scope of active law enforcement. AB 86 would provide contracting agencies the option to reclassify these members as local safety members, "if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, or properties of the employing agency."

Many airport police officers are responsible for the safety of the public while they are on airport property. These airport officers are classified as peace officers under California Penal Code Section 830.33 and may be required to carry firearms and other safety equipment. This legislation would allow such officers to receive retirement and disability benefits equal to those of other local safety positions, should the contracting agency choose to contract for this provision.

## **Background**

In 1935, an enhanced retirement formula and special industrial death and disability benefits were created in recognition of public employees working in hazardous and physically demanding jobs. The first safety class of employment was the California State Highway Patrol. In subsequent years, more safety classes were added, and in 1945 the first local safety classes were created.

## **Local Safety Membership in CalPERS**

Safety members receive enhanced retirement formulas and industrial death and disability benefits. Basic requirements for safety status have included principal duties of active law enforcement and being substantially responsible for the protection of people and property.

Some local safety designations, such as local police officers, firefighters, sheriffs, and investigators for district attorneys' offices, are mandated by statute. A local agency that contracts with CalPERS and provides a safety plan for its employees must provide safety status for those members.

Many other local safety designations specified in the Public Employees' Retirement Law (PERL) are available to local contracting agencies as a contract option; some of these include lifeguards, emergency medical technicians, harbor and port police, police in school districts, park rangers, and others.

These optional local safety designations permit local contracting agencies to elect to place certain categories of employees in safety membership. Without such election, these employees would be classified as local miscellaneous members. When local agencies elect to contract for these optional safety classifications, they must provide CalPERS with duty statements for the proposed safety groups. CalPERS determines if the proposed safety group can be included in any of the existing safety classifications available to local agencies.

In 2001, the CalPERS Board of Administration (Board) made an administrative determination, after a full Board hearing, that an airport patrol officer employed by the City of Santa Barbara did not qualify for safety membership under existing law. (In the Matter of the Application for Membership Reclassification of Michael F. Holrath (2001).) The Board determined that the airport patrol officer was not engaged in "active law enforcement" as required by statute and therefore did not qualify for safety reclassification because these officers did not function as police officers, either by virtues of duties performed or by training. Mr. Holrath sought review of the Board's decision by filing a Writ of Mandate with the Superior Court. The writ was denied. No further appeal was pursued in the Holrath case. However, a similar case brought by a group of current Santa Barbara airport patrol officers was recently denied and is currently pending administrative appeal.

Generally for reclassifications from miscellaneous to safety membership to apply retroactively to all service in a reclassified position, the PERL has been interpreted by CalPERS to require that members must be currently employed (active) by the employer requesting the reclassification and must be employed in the position that is being reclassified. Persons so employed will then have their previous qualifying service transferred.

### **Proposed Changes**

This bill would expand the definition of “local safety member” to include any airport patrol officer, airport law enforcement officer, or airport police officer employed by a contracting CalPERS agency. The general test used to determine safety status for police officers, whether the position engages in “active law enforcement”, would no longer apply where this section is selected by a local agency. This section would only apply to local agencies that choose to amend their contracts to include the provision, thereby allowing the local agencies to retain their decision-making ability. Not only cities, but other entities operating an airport (e.g., counties, Airport Districts, Joint Powers Authorities) would be eligible to contract for this provision.

### **Legislative History**

- 2007 AB 376 (Nava) – Would have expanded the definition of “local safety member” to include any airport patrol officer, airport law enforcement officer, or airport police officer employed by a contracting CalPERS agency that chose to contract for the new classification. The bill was vetoed by the governor. *CalPERS’ position: Neutral*
- 2003 AB 133 (Bogh) – Would have allowed deputy coroners in Riverside County be reclassified as public safety employees through contract amendment. The bill did not otherwise authorize the reclassification of other agencies’ deputy coroners as safety members. The bill died pursuant to Art. IV, Sec. 10(c) of the Constitution. *CalPERS’ position: Oppose, unless amended*
- 2002 Chapter 379 (AB 425, Oropeza) – Created a safety classification for local prosecutors. This classification was created as a mandated safety classification (not a contracting option) and included all public prosecutors in cities and counties.
- 2001 AB 657 (Pacheco) – Would have provided safety status to employees performing hazardous materials services. The bill died pursuant to Art. IV, Sec. 10(c) of the Constitution. *CalPERS’ position: Neutral*
- Chapter 787 (AB 1082, Nation) – Provided optional safety status for park rangers employed by local contracting agencies. The bill was chaptered into law on October 13<sup>th</sup>, 2001. *CalPERS’ position: No Position*

AB 1254 (Florez) – Would have created a safety classification for local prosecutors. This classification would have been a mandated safety classification (not a contracting option) and would include all public prosecutors in cities and counties. The bill died pursuant to Art. IV, Sec. 10(c) of the Constitution. *CalPERS' position: Oppose*

SB 695 (Karnette) – Would have created a contract option to provide safety status for employees whose functions clearly fall within the scope of active law enforcement, but who are currently classified as local miscellaneous members. This bill died on file. *CalPERS' position: Neutral*

## **Discussion**

### **1. Arguments in Support**

Personnel performing police-like functions in an airport should not be penalized because they are not employed by a standard police agency or because they do not perform the same duties, or have the same training, as the agency's police officers. They are still peace officers under the Penal Code and may be required to carry firearms and perform some of the same functions as other police. Since September 11, 2001, and the subsequent creation of the Transportation Security Administration, airport police play an important part in guaranteeing the safety of the public at airports under potentially dangerous circumstances.

*Organizations in Support: Service Employees International Union (co-sponsor), Peace Officers Research Association of California (co-sponsor), and American Federation of State, County and Municipal Employees*

### **2. Arguments in Opposition**

No known opposition at this time.

*Organizations in Opposition (as of 4/01/09): None*

### **3. Current Standards Used by CalPERS to Determine Safety**

The term "active law enforcement" is used to determine which groups belong in the safety categories. CalPERS relies upon court cases and opinions of the Attorney General to define what is meant by the term "active law enforcement" for safety service.

### **4. Social Security Exclusion**

In general, firemen and policemen make higher contributions to their retirement plans and do not contribute to Social Security. Employees reclassified from

miscellaneous to safety will continue to be subject to Social Security inclusion unless the position has been determined to be firemen/policemen for Social Security. This bill would exclude those airport law enforcement officers that are reclassified from local miscellaneous to local safety from membership in Social Security.

5. Legislative Policy Standard

The Board's Legislative Policy Standards suggest a neutral position on legislative proposals to reclassify members from miscellaneous to safety, whether mandated or optional. AB 86 would allow contracting agencies to reclassify specified airport patrol officers from miscellaneous to safety.

**V. STRATEGIC PLAN:**

This item is not a specific product of the Annual or Strategic Plans, but is a part of the regular and ongoing workload of the Office of Governmental Affairs.

**VI. RESULTS/COSTS:**

This bill would create an optional benefit for public agencies contracted with CalPERS that would allow any local miscellaneous employees who are employed as airport police officers, airport patrol officers, or airport law enforcement officers to be reclassified as safety.

**Program Costs**

The bill would not change any public retirement plan benefits or other post-employment benefits; rather it only expands the population eligible to contract for safety benefits. Since this is an optional contract benefit, it is difficult to predict how many public agencies would choose to exercise this option. Additionally, the actual cost of reclassification will be different for each public agency and will depend on the demographics of the safety plan, the other optional benefits offered in the safety plan, the number of members affected by the bill, and the amount of members' prior service in the positions being reclassified.

Regardless of the cost of converting prior service, there will be an increase in future contributions for both the employer and employee as a result of moving from local miscellaneous to local safety. Employee contributions will increase from seven percent to nine percent of pay. Any additional cost will be added to the employer's rate. These costs may be offset somewhat by removing these employees from Social Security inclusion; however, in computing employer rates, CalPERS does not consider the effect of Social Security inclusion or exclusion.

**Administrative Costs**

CalPERS performs employee contract amendments as part of its usual and ongoing workload.

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